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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,482	06/06/2001	Etienne Susini	8-1034-052	9555

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EXAMINER

FERGUSON, LAWRENCE D

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/875,482

Applicant(s)

SUSINI, ETIENNE

Examiner

Lawrence D Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-26 is/are pending in the application.
- 4a) Of the above claim(s) 27-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Election***

1. This action is in response to the election, mailed February 19, 2003. Claims 10 - 26 were elected.

### ***Correction***

2. In amendment submitted in paper no. 7, Applicant discloses 'cancel claims 1-9, and add new claims 10-47.' Originally there were 8 claims, meaning claims 9 – 46 were added instead of 10-47, resulting in claims 9-26 pending, with claims 27-46 held to a non-elected invention.

### **Claim Rejections – 35 USC 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 contains the trademark/trade name Erucamide®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to

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identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a slip agent and, accordingly, the identification/description is indefinite.

***Claim Rejections – 35 USC § 103(a)***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-10, 12, 14, 16-18, 20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,085,927) in view of JP 970094439.

7. Dohrer discloses a multilayer film comprising three layers, where the first layer comprises LLDPE having a density from about 0.890 g/cc to about 0.930 g/cc (column 3, lines 19-65) the middle layer comprises polyolefins such as polypropylene, polyethylene (a thermoplastic polyolefin) and LLDPE (column 5, lines 10-20) and the third layer comprises LLDPE having a density from about 0.890 g/cc to about 0.980 g/cc (column 5, lines 40-50).

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Dohrer discloses the film has an overall thickness ranging from about 0.3 mil to about 5.0mil (7.62  $\mu\text{m}$  to 127  $\mu\text{m}$ ), where the first layer has a thickness of 0.025 to about 0.9mils, the middle layer has a thickness of 0.020 to about 2.7 mils and the third layer has a thickness of between 0.025 to about 0.9 mils (column 6, lines 20-29). Dohrer does not teach producing the film with any corona oxidation treatment, therefore meeting the limitations of instant claims 14, 16 and 17. The phrase, 'wherein at least one of said outside layers contains less than 1300 ppm of a slip agent' includes 0, meaning the outside layer does not have to obtain a slip agent. Dohrer does not disclose the density or melt index of the middle layer.

JP '439 teaches a middle layer consisting of 0.860-0.900 g/cm<sup>3</sup> of density and a melt index of (0.1 g/10min), where the middle layer comprises polypropylene (abstract). Dohrer and JP '439 are analogous art because they are both from the field films. It would have been obvious to one of ordinary skill in the art to include the density and melt index of the middle layer in the film of Dohrer because JP '439 teaches the low density and melt index of the middle layer produces a soft resin structure having low crystallinity (abstract). Neither reference explicitly teaches the weight percentage of the polyolefins. The weight percentage is optimizable and directly affects the density of the multilayer film. It would have been obvious to one of ordinary skill in the art to optimize the components because discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch* 205 USPQ 215 and see *In re Aller* 105 USPQ 233.

***Claim Rejections – 35 USC § 103(a)***

8. Claims 9-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrer (U.S. 5,093,188) in view of JP 970094439.

9. Dohrer discloses a multilayer film comprising three layers (column 2, lines 11-14) where the first layer comprises LLDPE having a density from about 0.890 g/cc to about 0.930 g/cc (column 3, lines 4-14) the middle layer comprises polyolefins such as polypropylene, polyethylene (a thermoplastic polyolefin) and LLDPE (column 3, lines 55-64) and the third layer comprises LLDPE having a density from about 0.890 g/cc to about 0.980 g/cc (column 4, lines 3-22). Dohrer discloses the film has an overall thickness ranging from about 0.3 mil to about 3.0mil (7.62  $\mu\text{m}$  to 76.2  $\mu\text{m}$ ), where the first layer has a thickness of 0.025 to about 0.9mils, the middle layer has a thickness of 0.020 to about 2.7 mils and the third layer has a thickness of between 0.025 to about 0.9 mils (column 2, lines 48-56). The reference teaches the melt temperature of the first and third layers as 510°F (265°C) and 480°F (248°C), respectively (column 6, lines 40-42) where the polyolefins have a softening point, which is defined as a Vicat temperature. Dohrer does not teach producing the film with any corona oxidation treatment, therefore meeting the limitations of instant claims 14, 16 and 17. The phrase, 'wherein at least one of said outside layers contains less than 1300 ppm of a slip agent' includes 0, meaning the outside layer does not have to obtain a slip agent. Dohrer does not disclose the density or melt index of the middle layer.

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JP '439 teaches a middle layer consisting of 0.860-0.900 g/cm<sup>3</sup> of density and a melt index of 0.1 g/10min, where the middle layer comprises polypropylene soft resin having a temperature of 50-100°C (abstract). Dohrer and JP '439 are analogous art because they are both from the field films. It would have been obvious to one of ordinary skill in the art to include the density and melt index of the middle layer have a temperature of 50-100°C in the film of Dohrer because JP '439 teaches the low density and melt index of the middle layer produces a soft resin structure having low crystallinity (abstract). Neither reference explicitly teaches the weight percentage of the polyolefins. The weight percentage is optimizable and directly affects the density of the multilayer film. It would have been obvious to one of ordinary skill in the art to optimize the components because discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch* 205 USPQ 215 and see *In re Aller* 105 USPQ 233.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dohrer (U.S. 5,208,096) discloses a stretch wrap multilayered film (column 2, lines 6-20) with the middle layer comprising polypropylene (column 5, lines 1-5) and the two outside layers comprising LLDPE (column 7, lines 26-31). Additionally, Ralph (U.S. 5,279,872) discloses a multilayer stretch film comprising a core layer between a first and second outer layer comprising low density polyethylene (column 3, lines 25-44) where the ethylene components are based on a linear


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relationship (column 4, lines 20-23) and a core layer consisting of polypropylene (column 5, lines 40-42).

### **Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is (703) 305-9978. The examiner can normally be reached on Monday through Friday 8:30 AM – 4:30PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. Please allow the examiner twenty-four hours to return your call.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.

  
Lawrence D. Ferguson  
Examiner  
Art Unit 1774

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

